IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.213 of 2006

Date of Decision: 11 - 9 - 2007

M/s Mecca Power Private Limited ....Petitioner

through Mr.Ashwani Talwar , Advocate

v.

Uttar Haryana Bijli Vitran Nigam Limited & anr. ....Respondents

through Mr.Raman Chawla, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as, `the Act') has been filed by the petitioner relying on the arbitration clause as contained in Schedule `D' of the terms and conditions of the arbitration agreement which is to the following effect:-

"24. **ARBITRATION:**

All matters questions, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or in consequences or relating to this Contract whether or not obligations of either or both Parties under this contract be

subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitration of the Chairman or an officer appointed by the Chairman as his nominee. The Award of the Arbitrator shall be final and binding on the Parties to this Contract.

The objection that the Arbitrator has to deal with the matters to which the Contract relates in the course of his duties or he has expressed his views on any or all of the matters in dispute of difference, shall not be considered as a valid – objection.

The Arbitrator may from time to time with the consent of Parties to the Contract, enlarge the time for making the Award. The venue of arbitration shall be the place from which the acceptance of offer is issued or such other place as the Arbitrator in his discretion, may determine.

Subject to aforementioned provisions, the provisions of the Arbitration Act, 1940 and the Rules thereunder any statutory modifications thereof for the time being in force, shall be deemed to supply to the Arbitration proceedings under this Clause."

Notice invoking the arbitration clause was given by the petitioner to the respondents on 8.4.2006 which is not disputed by the respondents.

In the reply, the stand taken by the respondents was that Schedule `D' being relied upon by the petitioner was never signed by them and, therefore, not binding on the respondents. It was also contended by the respondents that measurement or joint inspection was not a dispute and, therefore, the matter cannot be referred for arbitration.

What was contended before me is that there is no dispute as per provisions of Schedule `D' and in the matter which would fall beyond the purview of Clause 24 as contained in Schedule `D' of the contract agreement, no Arbitrator can be appointed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties. There is an obvious fallacy in the arguments of the respondents.

Para 11 of the purchase order dated 9.8.2000, Annexure A-1, at page 11 of the paperbook which was given by the respondents stipulates "all other terms and conditions will be as per Schedule `D' of the Nigam". Therefore, even if Scheduled `D' was not signed by the respondents, it would still form an inherent part of the contract as by issuance of the purchase order as indicated above the respondents have agreed to the arbitration clause as contained in Schedule `D'. By express implication it would be included in the contract.

Coming to the second limb of the argument of learned counsel for the respondents that joint inspection to be carried out has not been mentioned which would lay down the foundation of the stand taken by the petitioner, the said argument is wholly misconceived. The dispute is not with regard to the joint inspection. The dispute is that joint inspection has not been mentioned in the contract agreement. It is the respondents who have taken the plea that the goods supplied by the petitioner were defective. On the plea of the respondents that the goods were defective, the petitioner had asked for joint inspection in relation to the goods alleged to have been supplied by the petitioner. Therefore, whether the goods were defective or not; whether the respondents were withholding the payment of goods justifiably; whether the respondents were within their permissible limit in declining the request for joint inspection?; are all issues which have to be determined by the Arbitrator.

Therefore, there is no force in the argument of the respondents.

As the respondents have failed to supply the vacancy in terms of Clause 24 of Schedule `D' of the contract agreement, therefore, I appoint Shri R.K.Aggarwal (retired Chief Engineer of the Haryana State Electricity Board) resident of House No.526, Sector 7, Panchkula as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

The intimation of appointment be sent to the Arbitrator.

Parties to appear before the Arbitrator on 13.10.2007 at 11.00 A.M.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

September 11, 2007

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